

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,

Plaintiff,

v.

GILBERTO CORTES,

a/k/a GILBERTO CORTES SALAMANCA,

d/b/a MUNDO HISPANO SERVICES,

Defendant.

No. \_\_\_\_\_

**COMPLAINT**

The United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, brings this suit to permanently enjoin defendant, Gilberto Cortes, and all persons and entities in active concert or participation with him, from directly or indirectly:

- (a) Preparing or filing, or assisting in the preparation or filing of any federal tax return for any other person or entity;
- (b) Engaging in any conduct or activity subject to penalty under section 6701 of the Internal Revenue Code, *i.e.*, preparing or assisting others in the preparation of any tax form or other document to be used in connection with a material matter arising under the internal revenue laws and which the defendants know will (if so used) result in the understatement of tax liability;
- (c) Engaging in any conduct or activity subject to penalty under section 6694, or any other section of the Internal Revenue Code, by understating taxpayers' liabilities;

- (d) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

### **JURISDICTION AND VENUE**

1. Jurisdiction exists under 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7408.
2. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1) and (b)(2), and 28 U.S.C. § 1396.

### **GILBERTO CORTES**

3. Gilberto Cortes resides at 1915 Rolling Creek Drive, Murfreesboro, Tennessee 37129, which is within the jurisdiction of this Court.
4. Cortes operates a tax return preparation business under the name Mundo Hispano Services at 1004-B Memorial Blvd., Murfreesboro, Tennessee 37129, which is within the jurisdiction of this Court.

### **SUMMARY OF CORTES' ACTIVITIES**

5. Cortes is an income tax preparer within the meaning of 26 U.S.C. § 7701(a)(36), because he prepares, facilitates, and/or assists in the preparation of other people's tax returns for compensation.
6. Internal Revenue Service records show that Cortes, through his business, Mundo Hispano Services, prepared approximately 2,359 returns in 2010, 3,310 returns in 2011, and 1,846 in 2012 (for the 2009, 2010, and 2011 tax years, respectively).

7. In addition to preparing tax returns himself, Cortes employs several individuals who assist in the preparation of federal tax returns at Mundo Hispano Services (his “return preparers”).

8. Cortes taught his return preparers how to prepare tax returns.

9. Cortes signs all returns prepared through his business and electronically files most of them.

10. Cortes or his return preparers fraudulently claimed additional child tax credits, to which his clients were clearly not entitled, without his clients’ knowledge.

11. Cortes knew, or should have known, that claiming additional child tax credits, which led to an understatement of his customers' federal income tax liabilities or generated erroneous refunds for his customers, was due to unreasonable positions.

12. Cortes continues to operate his tax return preparation business under the name Mundo Hispano Services, and market his business to new and former clients.

#### **DESCRIPTION OF CORTES’ FRAUDULENT RETURN PREPARATION SCHEMES**

13. Gilberto Cortes has repeatedly and continually fraudulently claimed additional child tax credits on his clients’ returns to reduce his clients’ tax liability or generate erroneous refunds for his clients.

14. The additional child tax credit is a refundable credit, which means that it can generate a refund exceeding the amount of income tax paid by an individual taxpayer. See 26 U.S.C. § 24(d).

15. The false or overstated additional child tax credit claims reported by Cortes or his return preparers on his clients' returns generate corresponding decreases in tax liability or increases in refunds.

16. A taxpayer may only claim the additional child tax credit for qualifying children. See 26 U.S.C. § 24(c).

17. For purposes of Code section 24, a qualifying child must be, in relevant part: (1) a citizen or resident of the United States; (2) who is younger than 17; (3) who lives with the taxpayer for more than six months of the taxable year; and (4) for whom the taxpayer provides more than 50% of the financial support for the child during the taxable year. See 26 U.S.C. §§ 24(c), 152(b)(3)(A), 152(c).

18. The vast majority of the returns prepared by Cortes in 2010, 2011, and 2012 utilized an Individual Tax Identification Number ("ITIN") for either the primary taxpayer or a dependent claimed by the taxpayer for purposes of the additional child tax credit.

19. An ITIN is a tax processing number that is issued to foreign nationals and others who have federal tax reporting or filing requirements and do not qualify for a Social Security Number.

20. Cortes or his employees prepared tax returns that allowed his clients to claim additional child tax credits for individuals who did not live with the taxpayers at all, let alone for more than six months during the taxable year.

21. Cortes or his employees prepared tax returns that allowed his clients to claim additional child tax credits for individuals who did not live in the United States.

22. Cortes or his employees prepared tax returns that allowed his clients to claim additional child tax credits for individuals without requiring the clients to substantiate that they provided more than 50% financial support for the claimed individuals.

23. Cortes or his employees prepared tax returns that allowed his clients to claim additional child tax credits for individuals that do not appear to meet the statutory age requirements.

24. The following examples are illustrative of Gilberto Cortes's fraudulent practices with respect to the additional child tax credit:

(a) Cortes prepared a return that claimed additional child tax credits for a client who subsequently informed the Service that Cortes reported the client's brother, his sister, and his two nieces as dependents, that all of them lived in Guatemala, and that he did not provide more than 50% financial support for any of them.

(b) Cortes prepared a return that claimed additional child tax credits for a client who subsequently informed the Service that Cortes reported the client's brother, his sister, and his niece as dependents, that his brother and sister both lived in

Mexico, that his niece did not live with him, and that he did not provide more than 50% financial support for any of them.

#### **HARM TO UNITED STATES**

25. Gilberto Cortes has caused substantial revenue losses to the United States.

26. As of January 15, 2014, the Service has examined 114 returns prepared by Cortes or his return preparers in 2011 for tax year 2010, which show an average tax deficiency of \$2,484.72.

27. Cortes or his return preparers prepared 4,648 returns in 2010 and 2011.

28. 3,648 returns (or 78%) improperly claim the additional child tax credit for individuals that do not meet the statutory requirements of 26 U.S.C. §§ 24 and 152.

29. Specifically, those returns claim the additional child tax credit for individuals that do not appear to be United States citizens or residents, do not appear to have resided with the taxpayer for more than six months of the taxable year, and/or for whom the taxpayer did not provide more than half of the individual's support during the taxable year.

30. If that \$2,484.72 average tax deficiency of the examined returns prepared in 2011 is applied to the 3,648 returns prepared in 2010 and 2011 that appear to improperly claim additional child tax credits, the Service estimates the harm to the United States from Cortes' misconduct for 2010 and 2011 is \$9,064,258.56.

31. As of January 15, 2014, the Service has examined 31 returns prepared by Cortes or his return preparers in 2012 for tax year 2011, which show an average tax deficiency of \$2,857.32.

32. Cortes or his return preparers prepared 1,846 returns in 2012.

33. 1,326 returns (or 72%) improperly claim the additional child tax credit for individuals that do not meet the statutory requirements of 26 U.S.C. §§ 24 and 152.

34. Specifically, those returns claim the additional child tax credit for individuals that do not appear to be United States citizens or residents, do not appear to have resided with the taxpayer for more than six months of the taxable year, and/or for whom the taxpayer did not provide more than half of the individual's support during the taxable year.

35. If the \$2,857.32 average tax deficiency of the examined returns prepared in 2012 is applied to the 1,326 returns Cortes prepared for the 2012 tax year that appear to improperly claim additional child tax credits, the Service estimates the harm to the United States from Cortes' misconduct for 2012 is \$3,788,800.

36. In total, the United States estimates the harm from Cortes misconduct for 2010, 2011, and 2012 is \$12,853,068.30 (i.e., \$3,788,800 + \$9,064,258.56).

**COUNT I**  
**Injunction Under 26 U.S.C. § 7407**

37. Plaintiff incorporates by reference the allegations in paragraphs 1 through 36.

38. Under 26 U.S.C. § 7407, Congress has authorized the United States to seek an injunction against any tax preparer who, among other things, has engaged in any conduct subject to penalty under Code section 6694.

39. If a return preparer's conduct is continual and/or repeated and the court finds that a narrower injunction (*i.e.*, prohibiting specific enumerated conduct) would not be sufficient to prevent the preparer's interference with the proper administration of federal tax laws, the court may enjoin the person from acting as a return preparer.

40. Code Section 6694(a) penalizes a tax return preparer who prepares a return understating the taxpayer's liability due to an unreasonable position (one for which there is no substantial authority), and the preparer knew or should have known of the position.

41. Code Section 6694(b) penalizes a tax return preparer who prepares a return or claim with an understatement of liability: (1) in a willful attempt to understate the liability; or (2) with a reckless and intentional disregard of rules or regulations.

42. Gilberto Cortes has continually and repeatedly prepared and filed federal tax returns that falsely report that his clients are entitled to additional child tax credits, thereby falsely overstating the amount of additional child tax credit claimed by his clients and enabling them to receive greater refunds than they are legitimately entitled to receive.



43. The returns prepared by Cortes, or his agents, contain unrealistic, unreasonable, and frivolous positions with no basis in fact.

44. Cortes, or his agents, by preparing returns that claim the additional child tax credit based on individuals who clearly do not meet the statutory requirements of 26 U.S.C. §§ 24 and 152, prepare returns in either a willful attempt to understate the liability of his clients or with a reckless and intentional disregard of rules or regulations.

45. Cortes has understated his clients' correct tax liabilities and has thus engaged in conduct subject to penalty under either 26 §§ 6694(a) or 6694(b).

46. Cortes continues to operate and market his tax return preparation business during the current tax filing season.

47. Absent an injunction, because Cortes is likely to continue preparing federal tax returns for clients, enabling them to receive greater refunds than they are legitimately entitled to receive, injunctive relief is necessary to prevent his continued misconduct.

48. Penalties and other administrative measures are insufficient to deter Cortes' misconduct.

49. Accordingly, Gilberto Cortes should be permanently enjoined under 26 U.S.C. § 7407 from acting as an income tax preparer and/or assisting in the preparation of federal income tax returns because a more limited injunction would be insufficient to stop his interference with the proper administration of the tax laws.

**COUNT II**  
**Injunction Under 26 U.S.C. § 7408**

50. Plaintiff incorporates by reference the allegations in paragraphs 1 through 49.

51. Code Section 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under 26 U.S.C. § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

52. Code Section 6701(a) penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

53. Gilberto Cortes prepared tax returns claiming additional child tax credits for clients who were not legitimately entitled to receive such credits, knowing that his return preparation would result in his clients' understating their federal tax liabilities.

54. If the Court does not enjoin Gilberto Cortes, he is likely to continue to engage in penalty conduct under 26 U.S.C. § 6701.

55. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

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**COUNT III**  
**Injunction Under 26 U.S.C § 7402(a)**

56. Plaintiff incorporates by reference the allegations in paragraphs 1 through 55.

57. Code Section 7402(a) authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

58. Gilberto Cortes, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

59. Unless enjoined, Cortes is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws.

60. If Cortes is not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully issuing federal income tax refunds to individuals not entitled to receive them.

61. Enjoining Cortes is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop Cortes' illegal conduct and the harm it causes the United States and its citizens.

62. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the United States of America prays for the following:

A. That the Court find that Gilberto Cortes, through his return preparer business, has continually and repeatedly engaged in conduct subject to penalty under

26 U.S.C. § 6694, and has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the internal revenue laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting Gilberto Cortes from acting as a federal tax return preparer;

C. That the Court find that Gilberto Cortes has engaged in conduct subject to a penalty under 26 U.S.C. § 6701, and that injunctive relief under 26 U.S.C. § 7408 is appropriate to prevent a recurrence of that conduct;

D. That the Court find that Gilberto Cortes, and his return preparer business, has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a);

E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Gilberto Cortes, and all those in active concert or participation with Gilberto Cortes, from:

- (a) Acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person other than themselves;
- (b) Advising, assisting, counseling, or instructing anyone about the preparation of a federal income tax return;

- (c) Engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6700, 6701 or any other penalty provision in the Internal Revenue Code;
- (d) Representing, or appearing on behalf of, any person before the Internal Revenue Service; and
- (e) Otherwise engaging in any conduct that substantially interferes with the proper administration and enforcement of the Internal Revenue laws.

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an order requiring Gilberto Cortes to contact, within 30 days of the Court's order, by United States mail and, if an e-mail address is known, by e-mail, all persons for whom he prepared, or assisted in preparing, federal tax returns to inform them of the permanent injunction entered against them;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an order requiring Gilberto Cortes to produce to counsel for the United States, within 30 days of the Court's order, a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom he prepared, or assisted in preparing, federal tax returns;

H. That the Court retain jurisdiction over Gilberto Cortes and over this action to enforce any permanent injunction entered against him;

I. That the United States be entitled to conduct discovery to monitor Gilberto Cortes's compliance with the terms of any permanent injunction entered against him; and

J. That the Court grant the United States such other and further relief, including costs, as is just and reasonable.

Dated: February 19, 2014

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